IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3482 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NIZAR MAHAL KENAVANI PRASARAK MANDAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3482 of 2002

MR SUNIT S SHAH for the Petitioner

Ms. SB TRIVEDI, AGP, for Respondent No. 1-5

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 07/05/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by learned AGP Ms. S.B. Trivedi for the respondents.

2. The grievance, which has been made in the

petition, is with regard to non-payment of maintenance as well as hostel building grant to the petitioner trust, which is managing two ashram shalas - Indira Gandhi Girls' Hostel and Subhash Chandra Bose Boys' Hostel.

3. It has been submitted by learned advocate Shri Sunit Shah appearing for the petitioner that recognition in respect of the above named two hostels had been cancelled by orders dated 6.2.1999 and, therefore, the maintenance grant as well as building grant was not given to the petitioner trust. The petitioner trust had challenged validity of the orders dated 6.2.1999 whereby the recognition had been cancelled.

4. The appeals, which had been filed by the petitioner trust in respect of derecognition of both the hostels, had been allowed and the appellate authority had quashed and set aside both the orders dated 6.2.1999. However, in both the appeals the appellate authority directed that 10% of the maintenance grant for the year 1998-99 should be deducted and rest of the amount of the maintenance grant should be paid to the petitioner trust. So far as the building grant is concerned, the appellate authority held that the petitioner was entitled to the building grant.

5. The grievance which has been ventilated by the petitioner is that in spite of the orders passed by the appellate authority, the concerned respondent authorities are not releasing the amount of grant.

6. It has been submitted on behalf of the respondent authorities that for the purpose of getting the building grant, the petitioner was supposed to submit a proposal. As no proposal has been submitted by the petitioner, the amount of building grant cannot be given to the petitioner.

7. In reply to the above submission made on behalf of the respondent authorities by the learned AGP, learned advocate Shri Shah has submitted that though a proposal has already been given by the petitioner, so as to avoid further delay, the petitioner shall submit another proposal for getting the building grant within a period of one month from today. Thus, the question with regard to building grant would not survive by the submission of a fresh proposal.

8. So far as the maintenance grant is concerned, it is an admitted fact that because of the orders passed by the appellate authority, 90% of the maintenance grant is

to be given to the petitioner. The learned AGP cold not show any good reason for non-payment of 90% of the maintenance grant.

9. Upon hearing the learned advocates and upon perusal of the orders referred to in the petition as well as the affidavit-in-reply, it is clear that the petitioner is entitled to 90% of the maintenance grant in respect of Indira Gandhi Girls' Hostel and Subhash Chandra Bose Boys' Hostel. As there is no justifiable reason for non-payment of the said amount, the respondent authorities are directed to make payment of the said grant as soon as possible and preferably within a period of three months from today.

10. At this stage learned AGP Ms. Trivedi has submitted that after the orders were passed by the appellate authority, the Commissioner, Tribal Development, Gujarat state, has passed an order dated 27.2.2002 whereby only 70% of the grant is to be released and, therefore, the petitioner is not entitled to 90% of the maintenance grant.

11. In reply to the above submission made by the learned AGP, it has been submitted by learned advocate Shri Sunit Shah for the petitioner that once the appellate authority has directed to give 90% of the maintenance grant, it is not open to the Commissioner, Tribal Development, to restrict the grant to 70%.

12. It is true that once the appellate authority has directed that 90% of maintenance grant should be given to the petitioner, the Commissioner, Tribal Development, should not have passed any order with regard to restricting the amount payable to the petitioner by way of maintenance grant. It, however, appears, upon perusal of the order dated 27.2.2002, that 70% of the amount of maintenance grant was directed to be given immediately and payment of 30% of the maintenance grant was to be withheld so as to see whether the petitioner trust does the needful for improvement of facilities which are given to the students.

13. It is hoped that upon getting 90% of the maintenance grant, the petitioner trust shall spend the same as soon as possible so that the students staying in the hostels managed by the petitioner can get all possible amenities.

14. In view of the above directions, the petition is allowed. Rule is made absolute to the above extent with

no order as to costs.

(A.R. Dave, J.)

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